

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN.APPLN.NO.156 OF 2007

Shri.Kadar Jarar Khan and
Anr. ..Applicants

Vs.

State of Maharashtra ..Respondents

Mr.N.Desai i/b T.R.Patel advocate for applicants
Mr.Rajesh More A.P.P. for the State

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : APRIL 17, 2007

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants are facing prosecution in Sessions Case No. 186 of 2003 pending before the Sessions Court at Sewree, Mumbai.

3. The applicants preferred an application for recall of witnesses in the said case. The said application came to be allowed by the learned Sessions Judge by order dated 11.9.2006 subject to payment of bhatta of Rs.100/- to each of the

witnesses and cost of Rs.300/-. Bhatta amount was deposited on 4.10.2006. However, by order dated 7.3.2007, the learned Sessions Judge observed that "(the application for recalling) of witnesses was allowed on 11.9.2006 subject to payment of bhatta to witnesses. The accused, however, failed to comply with the order and deposit bhatta immediately and they deposited bhatta on 4.10.2006. The order to recall the witnesses was conditional and the accused were expected to pay and deposit the bhatta immediately or at least on next date. However, they did not do so, therefore, the order to recall the witnesses stands automatically cancelled and application to recall stands impliedly rejected on account of failure on the part of accused to pay bhatta immediately."

4. However, the order dated 11.9.2006 reads as under:

. "Order passed on application to recall P.W. Nos.2 and 3. Applications are allowed subject to cost of Rs.300/- and bhatta of Rs.100/- payable each to these

witnesses by accused nos.1 and 2 and accused nos.6 and 8 collectively and on depositing of the above amount summons to P.Ws.2 and 3 be issued."

5. A perusal of the above order does not indicate that bhatta was to be deposited immediately or on the next date. The applicants have deposited bhatta within a month. As there was no time limit stated in the order dated 11.9.2006, it cannot be said that there was inordinate delay in depositing bhatta. The learned advocate for the applicants has stated that cost has also been deposited on 4.10.2006. Looking to these facts, the order dated 7.3.2007 is set aside and order dated 11.9.2006 shall stand revived. As bhatta and cost have already been paid, witness Nos.2 and 3 be recalled.

6. Application is disposed of.

[Smt.V.K.Tahilramani, J.]